



LOUISIANA PESTICIDE LAW

**LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
BOB ODOM, COMMISSIONER**

**OFFICE OF AGRICULTURAL & ENVIRONMENTAL SCIENCES
PESTICIDE & ENVIRONMENTAL PROGRAMS
POST OFFICE BOX 3596
BATON ROUGE, LOUISIANA 70821-3596**

Title 3 of the Louisiana Revised Statutes

Chapter 20

Louisiana Pesticide Law As Amended 1996*

TABLE OF CONTENTS

Part 1 - General

3201 - Short title	1
3202 - Definitions.....	1
3203 - Commissioner of Agriculture	5
3204 - Inspections; investigations.....	5
3205 - Stop Order.....	6
3206 - Cooperative agreements	7
3207 - Appointment of agent for service of process.....	7
3208 - Physicians reports	7
3209 - Penalty schedule for minor violations	8
3210 - Pesticide Fund.....	8

Part II - Louisiana Advisory Commission on Pesticides

3211 - Louisiana Advisory Commission on Pesticides	9
3212 - Officers and employees	11
3213 - Powers	12
3214 - Adjudicatory hearings	13

Part III - Registration of Pesticides

3221 - Registration of pesticides	13
3222 - Special registrations, permits, exemptions	15
3223 - Classification of pesticides	17
3224 - Local regulations.....	18
3225 - State chemist.....	19
3226 - Prohibitions, enforcement.....	20
3227 - Notice.....	21
3228 - Exclusions	22

Part IV - Sale and Application of Pesticides

3241 - Certification of private applicators	22
3242 - Certification of commercial applicators	22
3243 - Licensing of owner-operators	23
3244 - Certification of pesticides sales	25
3245 - Licensing of pesticide dealers	25
3246 - Certification and licensing of agricultural consultants	26
3247 - Use of certificates	28
3248 - Direct supervision.....	28
3249 - Examinations	28
3250 - Applicators	29
3251 - Fees	29
3252 - Violations, enforcement	30
3253 - Notice.....	33
3254 - Special exemptions for certain applications and recommendations of pesticides	33
3255 - Complaints	33
3256 - Exemptions	34
3257 - Reciprocal agreements	34

Part IV - Pesticide Wastes

3271 - Administration.....	35
3272 - Cooperative agreements	35
3273 - Monitoring	35
3274 - Determinations	35
3275 - Investigations.....	36
3276 - Public participation	37
3277 - Orders and communications.....	37
3278 - Enforcement.....	38
3279 - Violations	39

Part VI - Water Protection

3301 - Legislative findings	39
3302 - Definitions.....	39
3303 - Administration.....	40
3304 - Cooperative agreements	40
3305 - Monitoring	41
3306 - Determinations	41
3307 - Investigations.....	42
3308 - Orders and communications.....	43
3309 - Enforcement.....	43
3310 - Violations	44

Part VIII - School Pesticide Safety

3381 - Policy; purpose	44
3382 - Definitions.....	44
3383 - Record of pesticides used to control pests	45
3384 - Requirement that eight hours precede the exposure of children to restricted use pesticides	46
3385 - Least toxic method of pest control encouraged	46
3386 - Application of pesticides by certified commercial applicator	46
3387 - Employment of certified commercial applicators by school systems	47
3388 - Annual integrated pest management plan	47
3389 - Hypersensitive student registry; notification	48

CHAPTER 20. LOUISIANA PESTICIDE LAW

PART I. IN GENERAL

' 3201. Short title

This Chapter may be cited as the "Louisiana Pesticide Law."

' 3202. Definitions

(1) "Active ingredient" means:

(a) In the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest.

(b) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.

(c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(d) In the case of a dessicant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Agricultural commodity" means any plant, or part thereof, or animal or animal product, produced by any person primarily for sale, consumption, propagation, or other use by man or animals.

(3) "Agricultural consultant" means a person who, for a fee, provides technical advice, supervision, or recommendation in one or more of the categories under which agricultural consultants are licensed under this Chapter.

(4) "Antidote" means a practical, immediate treatment for poisoning and includes first-aid treatment.

(5) "Brand" means any name, trademark, or other designation under which a pesticide is sold.

(6) "Commercial applicator" means an individual who is certified to apply or supervise the application of restricted use pesticides in the course of his employment.

(7) "Commission" means the Advisory Commission on Pesticides as set forth in Part II of this Chapter.

(8) "Commissioner" means the commissioner of agriculture or his duly authorized representatives acting at his direction.

(9) "Competent" means properly qualified to perform functions associated with pesticide sales or application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

(10) Repealed by Acts 1990, No. 136, ' 2.

(11) "Department" means the Louisiana Department of Agriculture.

(12) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any pesticide waste into or on any land or water so that such pesticide waste, or any constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

- (13) "Division" means the division of pesticide waste control.
- (14) "E.P.A." means the United States Environmental Protection Agency.
- (15) "Farmer" means any person engaged in the commercial production of agricultural products.
- (16) "Field scout" means an individual who is employed by an agricultural consultant and who enters fields on a regular basis to make pest counts without making recommendations.
- (17) "F.I.F.R.A." means the Federal Insecticide, Fungicide, and Rodenticide Act, P.L. 92-516, as amended. > [FN1]
- (18) "General use pesticide" means a pesticide which is classified for general use by the commissioner or by the E.P.A. under the F.I.F.R.A.
- (19) "Hazard" means the probability that a given pesticide will have an adverse effect on man or the environment in a given situation.
- (20) "Inert ingredient" means an ingredient which is not active.
- (21) "Label" means the written, printed, or graphic material on, or attached to the pesticide or any of its containers or wrappers.
- (22) "Labeling" means all labels and all other written, printed, or graphic matter accompanying the pesticide at any time or to which reference is made on the label or in literature accompanying the pesticide.
- (23) "Manufacturer" means the person who owns or holds the rights to any brand under which a pesticide is sold.
- (24) "Nontarget organism" means a plant or animal other than the one against which the pesticide is applied.
- (25) "Owner-operator" means a person who is licensed to own or operate a business which engages in the application of pesticides for a fee.
- (26) "Package" means any parcel, bag, bottle, can, or other container which contains a pesticide.
- (27) "Person" means any individual, corporation, partnership, association, or other legal entity.
- (28) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or combination of substances intended for use as a plant regulator, defoliant, desiccant, or any substance the commissioner determines to be a pesticide.
- (29) "Pesticide dealer" means a person who is licensed to own or operate a business which engages in the sale of restricted use pesticides.
- (30) "Pesticide salesperson" means an individual who is certified to sell or supervise the sale of restricted use pesticides.
- (31) "Pesticide waste" means any pesticide or substance containing a pesticide or any container thereof when it is discarded or is meant to be discarded.
- (32) "Pesticide waste generation" means the act or process of producing pesticide wastes.
- (33) "Pesticide with restricted uses" means any pesticide for which the commissioner has established restrictions on the application of the pesticide during certain times or in certain locations.

(34) "Pests" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganism in living humans or other living animals, which the commissioner declares to be a pest.

(35) "Phenoxy herbicide" means any herbicide which contains a phenoxy derivative or lower aliphatic acid as an ingredient.

(36) "Private applicator" means an individual who is certified to apply or supervise the application of any restricted use pesticide for the purpose of producing any agricultural commodity on land owned or leased by the private applicator or for the purpose of applying or supervising the application of any restricted use pesticide on lands owned by another without compensation. Producing an agricultural commodity shall include related aspects of production, such as storage or transportation of an agricultural commodity produced by the private applicator.

(37) "Restricted use pesticide" means a pesticide which is classified for restricted use by the commissioner or by the E.P.A. under the F.I.F.R.A.

(38) "Shipping containers" means the smallest unit in which a manufacturer ships a particular pesticide.

(39) "Storage" means the containment of pesticide waste in such manner as not to constitute disposal of such pesticide waste.

(40) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any pesticide waste so as to neutralize such waste or so as to render such waste innocuous, safe for transport, amenable for recovery, amenable for storage, or reduced in volume.

(41) "Weed" means any plant which grows where not wanted or serves no useful purpose.

' 3203. Commissioner of agriculture

A. The commissioner shall adopt such rules and regulations as are necessary to implement the provisions of this Chapter, including but not limited to rules and regulations governing the registration, distribution, sale, offering for sale, and application of pesticides; the making of recommendations by agricultural consultants; the disposal of pesticide containers and wastes; and the disposition of agricultural commodities and other materials contaminated with pesticide residues. The commissioner by rule shall establish procedures for use in emergencies involving imminent danger to human health or to the environment. All rules and regulations shall be adopted in accordance with the provisions of the Administrative Procedure Act. > [FN1]

B. The commissioner shall administer and enforce the provisions of this Chapter and the rules and regulations adopted under the provisions of this Chapter.

C. The commissioner by rule may provide for the appointment of ad hoc committees to advise the commissioner on the implementation of the provisions of this Chapter.

D. The commissioner by rule may declare any type of plant, animal, or other type of life to be a pest.

E. The commissioner by rule may declare a substance to be a pesticide.

' 3204. Inspections; investigations

A. When the commissioner believes that a violation of the provisions of this Chapter or of the rules and regulations adopted under the provisions of this Chapter has occurred, the commissioner may apply to the district court

for the district in which the alleged violation occurred for a warrant to search the premises in which the alleged violation occurred and to obtain, at no cost to the state, samples of any pesticides or other materials involved in the alleged violation.

B. The commissioner shall have access, during normal working hours, to any premises where there is reason to believe that pesticides are sold, offered for sale, or held for distribution or application. The commissioner may examine any pesticide and may open any package and take a sample for analysis, at no cost to the state. Samples shall be taken in accordance with procedures established by the commissioner and shall be submitted to the state chemist for analysis. On completion of the analysis, the report shall be submitted to the manufacturer and the purchaser. If either person questions the validity of the analysis, that person may request in writing that another analysis be performed by a chemist approved by the commissioner. The person requesting the second analysis shall pay the costs of the second analysis. Entrance on the premises under the provisions of this Subsection shall not be deemed to be criminal trespass under any state law or local ordinance.

C. Subject to Subsection A of this Section, the commissioner may investigate any circumstances which the commissioner has reasonable grounds to believe has caused or resulted in a violation of the provisions of Parts I through V of this Chapter or the rules or regulations adopted under Parts I through V of this Chapter. In connection with any investigation conducted under this Subsection:

(1) The commissioner may issue subpoenas to compel the attendance of witnesses or the production of documents and records anywhere in the state.

(2) The sheriff of the parish in which the witness or the documents or records are located shall serve the subpoenas.

(3) The records of investigations conducted under the provisions of this Subsection shall be confidential and shall not be public records for the purposes of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950.

' 3205. Stop order

A. When the commissioner believes that a violation of the provisions of this Chapter or of the rules and regulations adopted under the provisions of this Chapter has occurred, the commissioner may issue a stop order prohibiting the distribution, sale, offer for sale, application, movement, or disturbance of the pesticide, pesticide wastes, or contaminated agricultural commodities or material.

B. Any person aggrieved by a stop order may petition the commission to hold a hearing on the matter. The hearing shall be held in accordance with the provisions of Section 3214 of this Chapter.

C. Based on the results of the hearing, or based on a consent agreement mutually entered into by the commissioner and a violator, the commissioner may take one or more of the following actions:

(1) Release the pesticide for sale.

(2) Require the manufacturer or distributor to dispose of the pesticide and reimburse the purchaser.

(3) Sell the pesticide at public auction, if the manufacturer refuses to dispose of the pesticide and reimburse the purchaser.

(4) Destroy the pesticide.

(5) Provide for the disposition of the pesticide wastes or contaminated agricultural commodities or materials

' 3206. Cooperative agreements

The commissioner may enter into any cooperative agreement with any person in order to further the intent and purposes of this Part. Each cooperative agreement shall be a public record and shall be subject to the provisions of > R.S. 44:1 et seq.

' 3207. Appointment of agent for service of process

Any person who is not a resident of or domiciled in this state or who has not appointed an agent for service of process in this state and who engages in any activity regulated by this Chapter does by that action appoint the secretary of state as his agent for service of process of any legal document. Venue for any legal action against any person initiated by service of process on the secretary of state shall be in the parish or parishes in which the violation occurred or the damages were sustained.

' 3208. Physicians' reports

Each physician who treats a medical complaint which the physician diagnoses as caused by pesticide poisoning shall provide notice of the poisoning to the commissioner. The notice shall be provided in accordance with rules adopted by the commissioner for that purpose.

' 3209. Penalty schedule for minor violations

A. The commissioner by rule shall adopt a schedule of penalties for minor violations of Parts I through VI and VIII of this Chapter, or of the rules or regulations adopted thereunder. The maximum penalty for a minor violation shall be five hundred dollars.

B. As used in this Section, a "minor violation" is one which does not endanger human health or safety, or which does not endanger the environment.

C. When the commissioner has evidence which indicates that a minor violation which appears in the schedule has been committed, the commissioner shall notify the alleged offender by certified mail, return receipt requested, of the facts involved in the alleged offense and the penalty set forth in the schedule. The alleged offender may admit, or not contest, the existence of the alleged facts and may pay the penalty. If the alleged offender does not pay the prescribed penalty within thirty days after receipt of notice, the commissioner shall call a hearing to adjudicate the matter in accordance with > R.S. 3:3214.

' 3210. Pesticide Fund

A. Funds received under Parts I through VI and VIII of this Chapter shall be deposited immediately upon receipt in the state treasury.

B. After compliance with the requirements of > Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required by Subsection A hereof shall be credited to a special fund hereby created in the state

treasury to be known as the "Pesticide Fund". The monies in this fund shall be used solely as provided in Subsection C hereof and only in the amounts appropriated by the legislature. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall be returned to the state general fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall be credited to the state general fund.

C. The monies in the Pesticide Fund shall be used solely for the following purposes:

(1) To provide for the programs and activities provided for in Parts I through VI and VIII of this Chapter.

(2) To construct, renovate, maintain, and equip a building on the Baton Rouge campus of Louisiana State University to provide administrative offices and analytical laboratories to be used in connection with the programs provided for in Parts I through VI and VIII of this Chapter.

(3) To build, equip, and maintain a building to house the offices of the department.

(4) The department, or the Louisiana Agricultural Finance Authority on behalf of the department, may fund the anticipated funds appropriated from the Pesticide Fund into revenue bonds for the purpose of renovating or constructing a building on the Baton Rouge campus of Louisiana State University to provide administrative offices and analytical laboratories to be used in connection with the programs established in Parts I through VI of this Chapter and for the purpose of acquiring, constructing, renovating, and equipping an office building and connected related facilities for use by the department in connection with promoting and assisting agriculture and forestry in this state. The department may pledge those funds to secure the repayment of revenue bonds or to secure a lease or purchase agreement entered into in connection with the issuance of revenue bonds for those purposes.

(5) If the revenues in the Pesticide Fund are pledged to secure the repayment of revenue bonds, or are pledged to secure a lease or purchase agreement entered into in connection with the issuance of revenue bonds, the fees which provide the funds shall remain at those levels existent at the time of the pledge until the bonds have been repaid.

CHAPTER 20. LOUISIANA PESTICIDE LAW

PART II. LOUISIANA ADVISORY COMMISSION ON PESTICIDES

' 3211. Louisiana Advisory Commission on Pesticides

A. The Louisiana Advisory Commission on Pesticides is hereby created within the Department of Agriculture and Forestry. The commission shall be domiciled in Baton Rouge.

B. The commission shall consist of the following eleven members appointed by the commissioner in accordance with the following provisions:

(1) One aerial applicator who is a commercial applicator appointed from a list of three persons nominated by the Louisiana Agricultural Aviation Association.

(2) One ground applicator who is a commercial applicator appointed from a list of three persons nominated by the Louisiana Pesticide Applicators Association.

(3) One chemical representative appointed from a list of three persons nominated by the Louisiana Agricultural Chemical Association.

(4) One agricultural consultant appointed from a list of three persons nominated by the Louisiana Agricultural Consultants' Association.

(5) One pesticide salesperson appointed from the state at large.

(6) One person appointed from a list of three persons nominated by the Louisiana Mosquito Control Association.

(7) One farmer who is a private applicator appointed from a list of three persons nominated by the Louisiana Farm Bureau Federation.

(8) One farmer who is a private applicator appointed from the state at large.

(9) Two persons appointed from a list of six persons, two of whom shall be nominated by the Louisiana Wildlife Federation, two of whom shall be nominated by the Sierra Club, and two of whom shall be nominated by the Audubon Society.

(10) One Louisiana member of the Society of Toxicology with an advanced degree in toxicology appointed from a list of three persons nominated by the Louisiana members of the Society of Toxicology.

C. Each appointment by the commissioner shall be submitted to the Senate for confirmation.

D. Members shall be appointed for terms which shall end at the same time as the term of the commissioner making the appointment. Members shall serve until their successors in office are appointed and sworn into office.

E. Vacancies in the offices of the members shall be filled in the same manner as the original appointments for the unexpired portion of the term of the office vacated.

F. A majority of the members of the commission shall constitute a quorum for the transaction of business. All official actions of the commission shall require the affirmative vote of a majority of the members of the commission.

G. The commissioner may appoint an alternate member for each member. If the member is appointed from a list of nominees, the alternate member shall be appointed from the same list. If the member cannot attend a meeting, the alternate member may serve as the member's representative if the member notifies the commission that he is unable to attend and that he wishes the alternate member to serve as his representative. Alternate members who serve as the representative of a member shall have voting rights.

H. The commission, by a vote of two-thirds of the members, may expel a member who has accumulated three consecutive unexcused absences from commission meetings.

I. Members of the commission shall not receive any salary for their duties as members. Members or representatives may receive a per diem for each day spent in actual attendance of meetings of the commission or of duly appointed committees or subcommittees of the commission. The amount of the per diem shall be fixed by the commission in an amount not to exceed forty dollars. Members or representatives may receive a mileage allowance for mileage traveled in attending meetings. The mileage allowance shall be fixed by the commission in an amount not to exceed the mileage rate for state employees.

J. The commission shall meet twice in each calendar year and may meet on the call of the chairman or upon the request of any three members. The commission shall not meet more than twelve times in any calendar year.

' 3212. Officers and employees

A. The members of the commission shall elect a chairman, a vice chairman, and such other officers as they deem necessary. All officers shall be members of the commission.

B. The commission shall employ a director and an assistant director, who shall be appointed by the commission subject to the approval of the commissioner of agriculture. The director and assistant director shall be in the unclassified service. The commissioner may employ such other personnel of the commission as he deems appropriate. All employees of the commission shall be under the direction and supervision of the commissioner.

' 3213. Powers

The commission shall have the following powers:

(1) To advise the commissioner on the adoption of such rules and regulations as are necessary to enforce the provisions of this Chapter.

(2) To hold hearings and conduct investigations.

(3) To advise the commissioner on the qualifications for licenses, certificates, and permits required to sell or apply pesticides, to engage in business as an agricultural consultant, or to dispose of pesticide wastes.

(4) To advise the commissioner on the requirements for the registration of pesticides.

(5) To hold hearings on alleged violations of the provisions of this Chapter or of the rules and regulations adopted under the provisions of this Chapter.

(6) To advise the commissioner on the civil penalties to be imposed or the injunctive relief to be sought to punish and restrain violations of the provisions of this Chapter or of the rules and regulations adopted under the provisions of this Chapter.

(7) To recommend that the commissioner suspend or revoke licenses, certificates, and permits or impose probation on holders of licenses, certificates, or permits.

(8) To work jointly with the Department of Health and Human Resources to establish and develop a state mosquito control program.

(9) To adopt bylaws for the orderly management of the affairs of the commission.

(10) To employ a director and assistant director, subject to the approval of the commissioner.

' 3214. Adjudicatory hearings

All adjudicatory hearings held by the commission shall be conducted in accordance with the following provisions:

(1) The commissioner shall convene the commission for the purpose of hearing the matter.

(2) The commissioner shall appoint a hearing officer, who shall preside over the hearing.

(3) The commissioner may issue subpoenas to compel the attendance of witnesses or the production of documents and records anywhere in the state in any hearing before the commission.

(4) The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act. > [FN1]

(5) The commission shall make an initial determination on the matter. This determination shall be submitted to the commissioner in writing.

(6) The commissioner shall make the final determination on the matter. If the determination of the commissioner differs from the determination of the commission, the commissioner shall issue a written opinion based on the record of the hearing.

(7) Except as otherwise provided in this Paragraph, appeals from rulings of the commissioner shall be taken in accordance with the provisions of the Administrative Procedure Act. Notwithstanding the provisions of > R.S. 49:964(B), any appeal from a determination of the commissioner, when filed in forma pauperis, shall be by civil proceedings in the district court for the parish in which the violation occurred.

PART III. REGISTRATION OF PESTICIDES

' 3221. Registration of pesticides

A. Each pesticide which is sold, offered for sale, or distributed in this state shall be registered annually with the commissioner. Each manufacturer shall register each pesticide prior to the pesticide being sold, offered for sale, or distributed. Registration shall expire on the last day of December of each year. Each manufacturer shall pay an annual registration fee of three hundred dollars for each pesticide registered.

B. Each application for the initial registration of a pesticide and for the re-registration of a pesticide for which the label has been changed shall be accompanied by the following information:

- (1) The brand of the pesticide.
- (2) The name and address of the manufacturer of the pesticide.
- (3) Two complete copies of the labeling of the pesticide, containing:
 - (a) The specific name of each active ingredient in the pesticide.
 - (b) The percentage of the active ingredients in the pesticide.
 - (c) The percentage of the inert ingredients in the pesticide.
 - (d) The net contents of each package in which the pesticide will be sold.
 - (e) A statement of claims made for the pesticide.
 - (f) Directions for the use of the pesticide, including warnings or caution statements.

(4) The Material Safety Data Sheet prepared in accordance with the requirements of the Environmental Protection Agency.

(5) Such other information as the commissioner by rule may require.

C. All information relative to the formulas of pesticides registered with the commissioner shall be exempt from the public records law and shall be confidential information.

D. The commissioner may refuse to register any pesticide. Any manufacturer who has been refused registration of a pesticide may request a hearing before the commission. The hearing shall be held in accordance with the provisions of Section 3214 of this Chapter.

E. Prior to registering a pesticide, the commissioner shall determine whether:

- (1) The composition of the pesticide is sufficient to support the claims made for the pesticide.
- (2) The label on the pesticide complies with state and federal requirements.
- (3) Use of the pesticide will produce unreasonably adverse effects on the environment.

F. As part of the registration of any pesticide, the commissioner may impose the following conditions:

(1) Each package of pesticides sold or offered for sale shall carry a label which shall state the brand of pesticide, the name and address of the manufacturer of the pesticide, the specific name of each active ingredient contained in the pesticide, and such other information as the commissioner shall require.

(2) The commissioner may require each shipping container in which a manufacturer ships pesticides which are sold or offered for sale in this state to carry a label with the following information:

(a) The lot or batch number of the pesticide, from which the date of manufacture can be determined.

(b) Such other information as the commissioner shall require.

3222. Special registrations, permits, exemptions

A. The commissioner may issue a special local needs registration for a pesticide for use in a specified location based on a specified local need. The composition and label of the pesticide shall comply with state and federal requirements. The special local needs registration shall be issued in accordance with Section 24(c) of the F.I.F.R.A. Each applicant for a special local needs registration shall submit five copies of the application and the documents supporting the application. Each applicant shall pay a fee of one hundred dollars for each application for a special local needs registration.

B. The commissioner may apply to the Environmental Protection Agency for authority to issue state experimental use permits. If the Environmental Protection Agency authorizes the commissioner to issue state experimental use permits, the following terms and conditions shall apply:

(1) The commissioner must find that the applicant needs the permit in order to accumulate information necessary to register a pesticide under Section 3221 of this Chapter.

(2) The commissioner may refuse to issue the permit if he finds that the issuance is not warranted or if he finds that the use of the pesticide under the proposed terms and conditions may cause unreasonably adverse effects on the environment.

(3) The commissioner shall prescribe the terms, conditions, and period of time for the permit.

(4) All actions of permit holders and applications of pesticides pursuant to each permit shall be subject to supervision by the Department of Agriculture.

(5) An application for a state experimental use permit may be filed at the time of, before, or after an application for registration is filed.

(6) The state experimental use permit shall be issued in accordance with Section 5(f) of the F.I.F.R.A.

(7) Each applicant for a state experimental use permit shall pay a fee of two hundred dollars for each application submitted.

C. The commissioner may apply to the E.P.A. for an emergency exemption to allow the application of a pesticide if the commissioner finds that an emergency exists or will exist, that a pesticide is available which will alleviate the effects of the emergency, and that the pesticide cannot be used because of state or federal laws or rules and regulations. The application shall be in accordance with the provisions of Section 18 of the F.I.F.R.A. If the E.P.A. grants the emergency exemption, all actions and applications shall be subject to supervision by the Department of Agriculture.

D. The commissioner may revoke or impose stricter conditions on any special registration, permit, or exemption if the commissioner finds that the terms and conditions of the special registration, permit, or exemption are being violated or that the terms and conditions are not adequate to avoid unreasonably adverse effects on the environment.

E. The commissioner by rule may delegate the authority to issue registrations and permits under this Section to a committee composed of:

(1) The director of the Advisory Commission on Pesticides.

(2) The director of the Louisiana Cooperative Extension Service, or his designee.

(3) The director of the Louisiana State Experimental Station, or his designee.

(4) One agricultural consultant appointed by the commissioner. The agricultural consultant shall not be engaged in any research project involving a pesticide which would create a conflict of interest with respect to the pesticide for which the registration or permit is sought.

(5) One farmer appointed by the commissioner.

(6) Such other members appointed by the commissioner as the commissioner deems necessary.

3223. Classification of pesticides

A. The commissioner may classify all pesticides in one of the following classifications:

(1) General use. The use of the pesticide, when applied in accordance with its directions for use, warnings, and cautions, and for the uses for which it is registered, or for one or more of those uses, or in accordance with a widespread and commonly recognized practice, will not generally cause, without additional restrictions, unreasonably adverse effects on the environment, or injury to the applicator.

(2) Restricted use. The use of the pesticide, when applied in accordance with its directions for use, warnings, and cautions, and for the uses for which it is registered, or for one or more of those uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional restrictions, unreasonably adverse effects on the environment, or injury to the applicator.

(3) Pesticide with restricted uses. The commissioner has established restrictions on the use of the pesticide during certain times of the year or in certain locations.

3224. Local regulations

A. The regulation of pesticides is preempted by this Chapter. The governing authority of a political subdivision shall not adopt any ordinance in any way affecting the registration, sale, or application of pesticides, or the disposal of pesticide wastes, except as provided herein.

B. The governing authorities of parishes and municipalities may request that the rules applicable to the distribution, sale, or application of pesticides be amended to provide for specific problems encountered in the parish or municipality. The following provisions shall govern requests by parish or municipal governing authorities:

(1) The request shall be addressed to the commissioner.

(2) The commission shall hear the request.

(3) The commission shall make a preliminary determination as to the advisability of amending the state rules and shall transmit its determination to the commissioner.

(4) The commissioner shall make the final determination as to the desirability of amending the state rules.

(5) The standards to be used by the commission and the commissioner in making their determinations shall be as follows:

(a) The gravity of the threat to the environment or to human, plant, or animal health sought to be alleviated by the proposed rule.

(b) The economic impact on the agricultural community caused by the proposed rule.

(c) The impact of the proposed rule on statewide uniformity of rules affecting pesticides.

(d) The availability of alternative pesticides.

(e) Whether the benefits of the proposed rule outweigh the liabilities of the proposed rule.

(6) If the commissioner determines that the rules should be amended, the rule shall be adopted in accordance with the Administrative Procedure Act.

C. Any governing authority of a political subdivision may petition the commissioner for approval of an ordinance applicable to the distribution, sale, or application of pesticides, or the disposal of pesticide wastes. The procedure for obtaining such approval shall be as follows:

(1) The governing authority shall transmit the proposed ordinance to the commissioner who shall refer the ordinance for hearing in accordance with R.S. 3:3224(B)(2) and (3).

(2) Upon receipt of the recommendation of the commission, the commissioner shall approve or disapprove the proposed ordinance.

(3) Both the commission and the commissioner shall be guided by the standards in R.S. 3:3224(B)(5) in making their respective determinations.

(4) Any governing authority aggrieved by a final decision of the commissioner, shall have a right of judicial review of the administrative process pursuant to the provisions of the Administrative Procedure Act.

D. Notwithstanding the provisions of R.S. 3:3224(A), any governing authority of a political subdivision having in effect, on September 1, 1983, an ordinance affecting the registration, sale or application of pesticides, or the disposal of pesticide wastes shall submit the ordinance to the commissioner on or before November 1, 1983, for approval pursuant to R.S. 3:3224(C). Any such ordinance received by the commissioner on or before November 1, 1983, shall continue in full force and effect until a final disapproval of the ordinance is rendered. Any such ordinance not received by the commissioner on or before November 1, 1983, shall be void effective November 1, 1983.

' 3225. State chemist

A. The director of the Agricultural Experimental Station of the Louisiana State University and Agricultural and Mechanical College shall be the state chemist.

B. The state chemist, or his designee, shall perform the chemical and other analyses necessary to implement the provisions of this Part and the rules and regulations adopted under the provisions of this Part. Such analysis shall be performed according to the most reliable methods available.

C. The state chemist, or his designee, shall establish analytical tolerances for label claims or guarantees of chemical composition of pesticides and analytical tolerances for pesticide residues.

D. Each manufacturer who registers a pesticide shall make available to the commissioner, at no cost to the state, sufficient samples of the pesticides for the enforcement of this Part.

E. The commissioner shall publish, at least annually, a report of all analyses performed by the state chemist under the provisions of this Section. The commissioner may publish such other reports resulting from inspections and analyses by the state chemist as the commissioner deems appropriate.

F. In all civil and criminal actions, all reports by the state chemist, when certified and sworn to by him, shall be prima facie evidence of the facts contained therein and shall be admitted into evidence without further foundation.

' 3226. Prohibitions, enforcement

A. The following actions are prohibited:

(1) The sale, offering for sale, or distribution of a pesticide which fails to meet its declared chemical composition.

(2) The sale, offering for sale, or distribution of any pesticide which is not registered with the commissioner.

(3) Any interference with the commission, the commissioner, the state chemist, or their representatives in the performance of their duties in connection with this Part.

(4) Any evasion of payment of any fines legally imposed by the commissioner.

(5) The making of false or misleading statements concerning the value of a pesticide on labels, packages, or in any printed or advertising matter.

(6) The adulteration or contamination of any pesticide sold in this state.

(7) The sale, offering for sale, or distribution of any pesticide without a label or of any pesticide which bears an illegible or inaccurate label.

(8) Violations of a stop order issued by the commissioner.

(9) Any violation of any provision of this Part or of any rule or regulation adopted under the provisions of this Part.

B. The commissioner may assess a civil penalty of not more than five thousand dollars for each violation of any of the prohibitions in Subsection A of this Section. Each day on which a violation occurs shall be considered a separate offense. In addition to civil penalties, the commissioner may assess the proportionate costs of the adjudicatory hearing against the offender. The commissioner by rule shall determine the amount of costs to be assessed.

C. The commissioner may suspend or revoke the registration of a pesticide for any violation of the provisions of Subsection A of this Section.

D. Penalties may be assessed, and registration suspended or revoked, only by a ruling of the commissioner based on an adjudicatory hearing held in accordance with the provisions of Section 3214 of this Chapter.

E. The commissioner may institute civil proceedings to enforce his rulings in the district court for the parish in which the violation occurred.

F. The commissioner may institute civil proceedings seeking injunctive relief to restrain and prevent the violation of the provisions of this Part, or of the rules and regulations adopted under the provisions of this Part, in the district court for the parish in which the violation occurred.

' 3227. Notice

The commissioner shall notify each person who is affected by a suspension or revocation of a registration, or by civil penalties, by certified mail, return receipt requested.

' 3228. Exclusions

Except as otherwise provided in specific agreements between the commissioner and the E.P.A., the provisions of this Part shall not apply to:

(1) Chemical components to be used in the manufacture of pesticides.

(2) Pesticides processed or manufactured in this state and intended for sale or distribution in other states or countries.

(3) Pesticides being transported through this state and destined for use in other states or countries.

PART IV. SALE AND APPLICATION OF PESTICIDES

' 3241. Certification of private applicators

No person shall apply or supervise the application of any restricted use pesticide as a private applicator unless that person has the proper certification. Certification shall be issued only after the applicant has satisfactorily passed an examination or has satisfactorily demonstrated his knowledge of the laws, rules and regulations, and safety practices governing the sale and application of restricted use pesticides in accordance with the rules and regulations adopted by the commissioner. Certification shall be valid for three years and may be renewed in accordance with rules adopted by the commissioner. Private applicators may supervise the application of restricted use pesticides by competent uncertified individuals who are under the direct supervision of the private applicator.

' 3242. Certification of commercial applicators

A. No person shall apply or supervise the application of any restricted use pesticide as a commercial applicator unless that person has the proper certification. Certification shall be issued only after the applicant has satisfactorily passed an examination. The commissioner shall establish categories and subcategories for certification in different areas of commercial application and shall establish specific standards for each category and subcategory. Certification shall be valid for three years and shall be renewed in accordance with rules adopted by the commissioner. The commissioner by rule shall provide for the issuance of annual certification cards. Commercial applicators may supervise the ground application of restricted use pesticides within the commercial applicator's certification by competent uncertified individuals who are under the direct supervision of the commercial applicator. Commercial applicators shall not supervise the aerial application of any pesticide by any uncertified person.

B. No person shall apply or supervise the application of any herbicide, rodenticide, insecticide, or restricted use pesticide, on a non-fee basis for grass and weed control, and rodent and general pest control in, on, or around structures or grounds of government subsidized and administered housing and multiplex housing, unless that person owns, leases, or rents the property or has proper certification as provided in Subsection A of this Section and the rules and regulations adopted thereunder.

' 3243. Licensing of owner-operators

A. No person shall own or operate a business engaged in the application of pesticides for a fee unless that person has the proper license. Licenses shall be valid for one year and shall be renewed in accordance with rules adopted by the commissioner. There shall be three classes of licenses:

- (1) Ground applicators
- (2) Aerial applicators who do not apply phenoxy herbicides
- (3) Aerial applicators who apply phenoxy herbicides

B. All aerial applicators employed by the owner-operator shall be commercial applicators. All ground applicators employed by the owner-operator shall be commercial applicators or shall work under the direct supervision of a commercial applicator.

C. Prior to obtaining a license, each owner-operator shall post a surety bond with the commissioner. The amount of the bond for owner-operators engaged in ground applications shall be twenty-five thousand dollars. The amount of the bond for owner-operators engaged in aerial applications who apply phenoxy herbicides shall be fifty thousand dollars. The amount of the bond for owner-operators engaged in aerial applications who do not apply phenoxy shall be twenty-five thousand dollars. The bond shall be in favor of the commissioner and shall be conditioned on the licensee fulfilling his obligations to persons who suffer damages as a result of the application of pesticides by the owner-operator

or his employees. The bond shall be written by a bonding company approved by the commissioner. Bonds shall not be canceled except by ninety days written notice to the commissioner. Each person who suffers damages caused by any action of an owner-operator in connection with any application of a pesticide may sue on the bond in any court of competent jurisdiction to recover the damages. The aggregate liability of the surety shall not exceed the principal amount of the bond. Cash bonds, certificates of deposit, property bonds, or irrevocable letters of credit may be used to satisfy the bond requirement.

D. Each owner-operator may obtain liability insurance in lieu of the surety bond. The amount of the insurance shall be equal to the amount of the bond otherwise required. The commissioner by rule shall provide for the requirements for insurance.

E. All mechanically powered equipment used by an owner-operator shall be inspected annually by the commissioner and shall have the inspection decal prominently displayed.

F. Each aircraft and each rotor craft which is used to apply pesticides shall be identified with numerals, or letters, or both, which shall be in accordance with the Federal Aviation Administration's rules and regulations.

- (1) The aircraft or rotor craft is repainted; or
- (2) Until the numerals or letters are repainted, restored, or changed; or
- (3) Until January 1, 1989, whichever occurs first.

G. Owner-operators shall keep records for two years accurately reflecting the application of pesticides. The records shall be furnished to the commissioner upon his request. These records shall include:

- (1) The name of the pesticide applied.
- (2) The rate of each application.
- (3) The date of each application.
- (4) The place of application.
- (5) Such other information as the commissioner may require.

' 3244. Certification of pesticide salespersons

No person shall sell or supervise the sale of restricted use pesticides as a pesticide salesperson unless that person has the proper certification. Certification shall be issued only after the applicant has satisfactorily passed an examination. Certification shall be valid for three years and shall be renewed in accordance with rules adopted by the commissioner. The commissioner by rule shall provide for the issuance of annual certification cards. Pesticide salespersons may supervise the sale of restricted use pesticides by competent uncertified individuals who are under the direct supervision of the pesticide salespersons.

' 3245. Licensing of pesticide dealers

A. No person shall own or operate a business engaged in the sale of restricted use pesticides unless that person has the proper license. Licenses shall expire on December thirty-first of each year and may be renewed in accordance with rules adopted by the commissioner. Each pesticide dealer shall obtain a license for each location at which restricted use pesticides are sold.

B. Each person who is employed by a pesticide dealer and who sells restricted use pesticides shall be a pesticide salesperson or shall work under the direct supervision of a pesticide salesperson.

C. Pesticide dealers shall keep records for two years accurately reflecting their possession and disposition of restricted use pesticides. The records shall be furnished to the commissioner upon his request. These records shall include:

- (1) The name of the pesticide purchased and sold.
- (2) The amount of the pesticide purchased and sold.
- (3) The date of transactions.
- (4) The name, address, and certification number of the purchaser.
- (5) Such other information as the commissioner may require.

D. Each pesticide dealer shall maintain records of the storage of pesticides by that dealer. The commissioner shall adopt rules and regulations governing the records required by this Subsection. The rules and regulations shall require the pesticide dealers to maintain sufficient records to comply with the Hazardous Material Information Development, Preparedness, and Response Act, > [FN1] shall specify the length of time the records shall be maintained, and may require the dealer to report to the commissioner the information in the records which are required to be maintained.

' 3246. Certification and licensing of agricultural consultants

A. No person shall be employed as an agricultural consultant unless that person has the proper certification. Certification shall be issued only after the applicant has satisfactorily passed an examination. Certification shall be valid for three years and shall be renewed in accordance with rules adopted by the commissioner. The commissioner by rule shall provide for the issuance of annual certification cards.

B. Applicants for certification as agricultural consultants shall elect to be examined for certification in one or more of the following categories:

- (1) Control of insects, mites, nematodes, or other invertebrates.
- (2) Control of plant pathogens.
- (3) Control of weeds.
- (4) Soil management.
- (5) Such other categories as the commissioner by rule may establish.

C. The commissioner by rule may establish such other categories as he deems necessary.

D. No new applications for an agricultural consultant's certificate shall be accepted unless the applicant furnishes satisfactory evidence that he meets the following requirements:

- (1) He holds a bachelor's, master's, or a doctor's degree from an accredited college or university.
- (2) He has earned at least thirty semester hours of college credit in agronomy, soil science, weed science, entomology, plant pathology, horticulture, plant physiology, or other biological science, or any

combination of such.

(3) He has earned at least four hours of college credit in each discipline area for which certification is sought. The four discipline areas requiring certification are entomology, plant pathology, weed science, and soil science.

(4) He has, with a master's or doctor's degree, at least one crop season of experience, and with a bachelor's degree, at least two crop seasons of experience, in the field for which he requests certification, employed by a certified agricultural consultant.

E. All experience shall be documented in such manner as the commissioner may require. The commissioner may waive the requirement of experience while employed by an agricultural consultant for applicants with a master's or doctor's degree who demonstrate other comparable experience.

F. Every field scout employed by a licensed agricultural consultant shall be registered with the Department of Agriculture. This registration shall be valid only as long as the individual is employed by the agricultural consultant indicated on the face of the registration certificate.

G. Agricultural consultants shall put all recommendations in writing with two copies each. One copy shall be signed, dated, and furnished to the person for whom the recommendation is being made. The consultant shall retain one copy which shall be furnished to the commissioner upon his request. When a pesticide use is recommended, the recommendation shall include:

- (1) The pesticide or pesticides recommended.
- (2) The recommended rate of application.
- (3) The date on which each application is recommended.
- (4) The area to be treated.
- (5) A brief statement of the reason or reasons for the recommendations.
- (6) Such other information as the commissioner may require.

H. No person shall engage in business as an agricultural consultant for a fee unless that person holds a license as an agricultural consultant. The commissioner by rule shall provide the requirements for an agricultural consultant's license. Each agricultural consultant's license shall expire on December thirty-first of each year and may be renewed in accordance with rules adopted by the commissioner.

I. The provisions of this Section shall not apply to employees of the state or federal government conducting research or demonstrations in their official capacities.

' 3247. Use of certificates

The commissioner by rule may provide that persons who hold more restrictive certificates may use those certificates in lieu of less restrictive certificates.

' 3248. Direct supervision

Persons who hold certificates issued under the provisions of this Chapter may provide direct supervision for the

application or sale of a restricted use pesticide by competent uncertified persons. The certified person shall be fully responsible for the actions of the uncertified persons under his direct supervision. The certified person shall give instruction and direction to the uncertified persons and shall be available when and if his presence is needed. The certified person need not be physically present at all times unless the commissioner by rule requires the physical presence of the certified person at the time the restricted use pesticide is sold or applied.

' 3249. Examinations

A. Each applicant for a certificate issued under the provisions of this Chapter shall satisfactorily pass an examination prior to being issued a certificate. The commissioner by rule shall provide for the preparation, administration, and grading of all examinations. The commissioner shall review and approve all proposed examinations and shall determine the minimum score necessary to satisfactorily pass each examination.

B. The commissioner may designate individuals or associations who may submit proposed questions for examinations.

C. The commissioner shall fix the dates for all examinations and may establish a date prior to each examination which shall be the last date on which applications to take examinations will be accepted. The commissioner may refuse to administer examinations to persons whose applications are received after the cutoff date.

D. The commissioner by rule may require holders of certificates to attend a course of instruction or satisfactorily pass an examination in order to renew the certification.

' 3250. Applications

A. Each application for examination shall be in writing and shall be on forms prescribed by the commissioner. Each application shall be accompanied by the examination fee and such information and documents as the commissioner may require.

B. Each application for a license, certificate, or registration shall be in writing and shall be on forms prescribed by the commissioner. Each application shall be accompanied by the license, certificate, or registration fee, proof of passing the examination, proof of financial responsibility where required, and such other information and documents as the commissioner may require.

C. Each applicant shall indicate on each application the street address of his place of business. If the place of business does not have a street address, the applicant shall provide sufficient information to establish the physical location of the place of business.

' 3251. Fees

A. The examination fee for each examination shall be established by the commissioner by rule in an amount not to exceed one hundred dollars. In establishing the amount of the examination fee, the commissioner shall consider the cost incurred in obtaining, administering, and grading the examination.

B. The fees for the licenses and certificates issued or reissued by the commissioner shall be as follows:

(1) The resident license fee shall be one hundred dollars. For the purposes of this Paragraph, a "resident" means any person who has been domiciled in Louisiana for a period of at least ninety days immediately preceding the date of application for the license and who has not claimed residence in any

other state for any other purpose.

(2) The nonresident license fee shall be two hundred dollars. For the purposes of this Paragraph, a "nonresident" means any person who does not qualify as a resident under Paragraph (1) above.

(3) The certification fee, except as provided in Subsection C of this Section, shall be fifteen dollars.

(4) The fee for issuing the annual certification card shall be fifteen dollars. This provision shall not apply to private applicators.

(5) The fee for inspecting each item of mechanically powered equipment shall be twenty-five dollars.

(6) The fee for registering each field scout shall be five dollars.

C. The certification fee for private applicators shall be ten dollars. The certification fee for employees of local, state, and federal governments for the application of pesticides in the course of their public employment shall be ten dollars.

D. The commissioner by rule shall establish procedures for the payment of fees.

' 3252. Violations, enforcement

A. Violations of this Part shall include but shall not be limited to the following:

(1) Making false or fraudulent claims not in accordance with the label through any media misrepresenting the efficacy of pesticides or methods to be utilized.

(2) Making a pesticide recommendation or application inconsistent with the labeling or in violation of the E.P.A. or state restrictions on the use of that pesticide.

(3) Knowingly operating faulty or unsafe equipment.

(4) Operating in a faulty, careless, or negligent manner.

(5) Neglecting or, after notice, refusing to comply with the provisions of this Chapter or rules and regulations adopted under the provisions of this Chapter.

(6) Refusing or neglecting to keep and maintain the records required by this Part.

(7) Knowingly making false or fraudulent records or invoices.

(8) Selling or supervising the sale of any restricted use pesticide to a person who does not have the proper certification.

(9) The application of a restricted use pesticide by a ground applicator who does not hold the appropriate certification or who is not under the direct supervision of a person who holds the appropriate certification, or the application of any pesticide by an aerial applicator who does not hold the appropriate certification.

(10) Supervising the sale or application of a restricted use pesticide without the proper certification.

(11) Allowing the application of restricted use pesticides by uncertified persons without the physical presence of a certified applicator, when the physical presence of the certified applicator is required by the commissioner.

(12) The aiding or abetting, or conspiring to aid or abet, by any licensed or certified person, of the violation of the provisions of this Chapter, or of the rules and regulations adopted under the provisions of this Chapter, by any unlicensed or uncertified person.

(13) Allowing a license or certificate to be used by another person.

(14) Impersonating any federal, state, parish, or city inspector or official who has authority to enforce pesticide laws, ordinances, rules, or regulations.

(15) Interference with the commission, the commissioner, the state chemist, or their representatives in the performance of their duties in connection with this Part.

(16) Performance of a service or function by any person whose license or certificate has been suspended or revoked, or by any person who has been denied a license or certificate, or failure by any person to obtain the necessary license or certificate for any activity requiring a license or certificate under the provisions of this Chapter.

(17) Application of phenoxy herbicides by any aerial applicator who does not have the proper license or the proper bond or insurance.

(18) Any violation of any provision of this Chapter or of any rule or regulation adopted under the provisions of this Chapter.

(19) The sale of a restricted use pesticide by a person who does not hold the appropriate certification or who is not under the direct supervision of a person who holds the appropriate certification.

(20) The purchase of a restricted use pesticide by a person who does not hold the appropriate certification.

(21) Any evasion of payment of any fines legally imposed by the commissioner.

B. The commissioner may assess a civil penalty of not more than five thousand dollars for each violation of any of the prohibitions in Subsection A of this Section. Each day on which a violation occurs shall be considered a separate offense. In addition to civil penalties, the commissioner may assess the proportionate costs of the adjudicatory hearing against the offender. The commissioner by rule shall determine the amount of costs to be assessed.

C. The commissioner may suspend or revoke any license or certificate issued under the authority of this Part, or impose probation on any person who holds a license or certificate, for any violation of any of the prohibitions in Subsection A of this Section.

D. Civil penalties may be assessed, licenses and certificates may be suspended or revoked, and probation may be imposed, only by a ruling of the commissioner based on an adjudicatory hearing held in accordance with the provisions of Section 3214 of this Chapter.

E. The commissioner may institute civil proceedings to enforce his rulings in the district court for the parish in which the violation occurred.

F. The commissioner may institute civil proceedings seeking injunctive relief to restrain and prevent the violation of the provisions of this Part or of the rules and regulations adopted under the provisions of this Part in the district court for the parish in which the violation occurred.

' 3253. Notice

A. The commissioner shall notify each person who is affected by a suspension or revocation of a license or certificate, or by probation, or by civil penalties, by certified mail, return receipt requested.

B. Each person whose license or certificate has been revoked or suspended shall return the license or certificate to the commissioner within fifteen days of the date on which the notice was received.

' 3254. Special exemptions for certain applications and recommendations of pesticides

As used in > R.S. 3:3252(A)(2), the reference to recommendations or applications inconsistent with the labeling of a pesticide shall not include the following:

(1) The application of a pesticide at any dosage, concentration, or frequency less than that specified on the labeling.

(2) The application of a pesticide against any target pest not specified on the labeling, if the application is to the crop, animal, or site specified on the labeling, unless the E.P.A. has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling.

(3) The use of any method of application not prohibited by the labeling.

(4) The mixing of a pesticide or pesticides with a fertilizer when the mixture is not prohibited by the labeling.

' 3255. Complaints

A. Any person who believes that he has suffered damages as a result of any action by any person regulated by the provisions of this Part may file a damage complaint with the commissioner.

B. All damage complaints shall be in writing, shall be on forms prescribed by the commissioner, shall be signed by the complainant, and shall be filed within fifteen days of the action by the alleged offender or the discovery of the damage, whichever occurs later. Failure to file a timely complaint shall not affect the right of the person to institute legal proceedings for the damages.

C. Each person who files a damage complaint shall permit the commissioner, the alleged offender, or the representative of either, such as bondsmen or insurers, to observe within reasonable hours the lands, crops, or nontarget organisms alleged to have been damaged in order to determine any damages. Failure of the claimant to permit such observation and examination of the damaged property shall automatically bar the claim against the alleged offender under this Section.

D. The commissioner may undertake such monitoring activities, including but not limited to monitoring of the air, soil, water, plants, and animals as may be necessary for the administration and enforcement of this Section.

' 3256. Exemptions

A. The commissioner by rule shall delegate to the Structural Pest Control Commission the authority to examine

and certify all structural pest control operators required to be certified under the provisions of > R.S. 3:3301 et seq.

B. No governmental entity or employee thereof shall be exempt from the certificate, enforcement, or record-keeping provisions of this Part, except as otherwise provided herein.

' 3257. Reciprocal agreements

The commissioner may waive all or part of the examination requirements for applicants for certification on a reciprocal basis with any other state which has substantially the same requirements for examinations.

PART V. PESTICIDE WASTES

' 3271. Administration

A. The provisions of this Part shall be administered by the Department of Agriculture and Forestry through the division of pesticide and environmental programs within the office of agricultural and environmental sciences.

B. The commissioner shall adopt such rules and regulations as are necessary to implement the provisions of this Part. The rules and regulations shall be adopted in accordance with the Administrative Procedure Act. > [FN1]

C. The commissioner may employ such personnel as are necessary to administer the provisions of this Part.

' 3272. Cooperative agreements

In order to accomplish the objectives of this Part, the commissioner may enter into cooperative agreements with appropriate governmental agencies.

' 3273. Monitoring

The commissioner shall establish a program for monitoring pesticide wastes in the state.

' 3274. Determinations

A. When the commissioner determines that the concentrations of pesticide wastes exceed promulgated federal or state standards, or when the commissioner determines that the concentrations of pesticides pose a threat or reasonable expectation of a threat to human health or to the environment, the commissioner shall determine the appropriate action to be taken under the provisions of this Part.

B. The commissioner shall adopt rules to establish procedures for making determinations under the provisions of Subsection A of this Section.

C. The determinations made under Subsection A of this Section shall be based on scientific and technical

information, including but not limited to information from the following sources or concerning the following subjects:

- (1) The history of the levels of concentration of the pesticide or pesticides, based on scientifically valid monitoring studies.
- (2) The gravity of the threat to human health or to the environment.
- (3) Standards for contamination levels promulgated by appropriate governmental agencies.
- (4) Information published or made available by appropriate governmental agencies.
- (5) Information published or made available by pesticide manufacturers.
- (6) Information published or made available by institutions of higher education.
- (7) The availability of alternative pesticides.
- (8) The availability of alternative methods of application of the pesticide.
- (9) The economic impact of limiting, restricting, or prohibiting the use of the pesticide.
- (10) Other criteria established by the commissioner by rule.

' 3275. Investigations

A. The commissioner shall investigate any circumstances relating to the presence of pesticide waste in the state in concentrations which the commissioner has determined pose a threat or reasonable expectation of a threat to human health or to the environment under > R.S. 3:3274.

B. In connection with any investigation conducted under Subsection A of this Section, the commissioner may take the following actions:

- (1) Enter, during working hours, any property or premises within which the commissioner has reason to believe pesticide contamination or pesticide waste is a threat to human health or to the environment.
- (2) Take samples of any pesticides, pesticide wastes, or any substance which has come into contact with pesticides.

C. In circumstances not covered by Subsection B of this Section, the commissioner may apply to the district court for the parish in which the pesticide waste is located for a warrant, or warrants, authorizing an investigation and the taking of samples.

D. Entrance upon property or premises under the provisions of Subsection B of this Section shall not be deemed to be criminal trespass under any state law or local ordinance.

E. The commissioner may issue subpoenas to compel the attendance of witnesses or the production of documents or records anywhere in the state which are relevant to an investigation pursuant to this Part. The sheriff of the parish in which the witness or the documents or records are located shall serve the subpoena if requested by the commissioner.

' 3276. Public participation

A. Citizen complaints concerning the treatment, storage, or disposal of pesticide wastes may be filed with the Department of Agriculture and Forestry at any time during normal working hours. Complaints shall be in writing and shall be signed by the complainant.

B. The Department of Agriculture and Forestry shall investigate any citizen complaint involving the treatment, storage, or disposal of pesticide wastes. The investigation shall be initiated within thirty days of the receipt of the complaint.

' 3277. Orders and communications

When the commissioner makes a determination under the provisions of > R.S. 3:3274, the commissioner may take one or more of the following actions:

(1) Issue appropriate protective orders to mitigate the further contribution to the accumulation of the pesticide or pesticide wastes. The protective order may limit, restrict, or prohibit any application of the pesticide in the area where the application of the pesticide would contribute to the accumulation of the pesticide or pesticide wastes.

(2) Issue remedial orders directing any responsible person to take prompt remedial action to correct any situation in which any substance, action, or condition has caused or is causing any threat to human health or to the environment.

(3) Communicate his determination to any appropriate governmental agency.

(4) Participate in issuing a public communication concerning the determination. Each public communication shall be issued in accordance with a cooperative agreement with the appropriate governmental agency entered into under the provisions of this Part.

' 3278. Enforcement

A. The commissioner may seek and obtain injunctive relief to restrain and prevent violations of orders issued under the provisions of this Part or in accordance with the rules and regulations adopted under the provisions of this Part.

B. The commissioner may impose civil penalties for violations of the orders issued under the provisions of this Part or in accordance with the rules or regulations adopted under the provisions of this Part. The civil penalties shall not exceed twenty-five thousand dollars per offense. Each day on which a violation occurs shall be considered a separate offense. Civil penalties shall be imposed only on the basis of an adjudication of violations pursuant to an adjudicatory hearing held in accordance with the provisions of > R.S. 3:3214. The commissioner may assess the proportionate costs of the adjudicatory hearing against the offender. The commissioner by rule shall determine the amount of costs to be assessed.

C. Whoever violates the provisions of this Part or the rules and regulations adopted under the provisions of this Part shall be fined not more than twenty-five thousand dollars for each day on which a violation occurs, or, imprisoned, with or without hard labor, for not more than five years, or both.

D. The commissioner may institute civil proceedings to enforce the rulings of the commissioner in the district court for the parish in which the violation occurred.

' 3279. Violations

A. No person shall violate any provision of this Part or of any rule or regulation adopted under the provisions of this Part.

B. Nothing in this Part shall be construed to affect any chemical manufacturing facility being regulated by the Department of Environmental Quality under Title 30 of the Louisiana Revised Statutes of 1950 as of May 1, 1990.

' 3280. Repealed by Acts 1990, No. 136, ' 2

PART VI. WATER PROTECTION

' 3301. Legislative findings

The legislature hereby finds and declares that clean water is a vital necessity for the people of our state. The legislature further finds and declares that the establishment of a program for monitoring the presence of pesticides in the waters of this state and for alleviating excessive levels of pesticides in the waters of this state by minimizing, mitigating, and preventing the potential for those excessive levels of pesticides is a reasonable exercise of the police power of the state and is for a public purpose.

' 3302. Definitions

As used in this Part, the following words shall have the following meanings ascribed to them:

(1) "Affected waters" means any waters of the state in which the levels of pesticides pose a threat or a reasonable expectation of a threat to human health or to the environment.

(2) "Appropriate governmental agency" means any federal, state, or local agency which has jurisdiction over or expertise in the subject matter affected by this Part, and includes but is not limited to, the United States Department of Agriculture, the United States Environmental Protection Agency, the United States Geological Survey, the Department of Environmental Quality, the Department of Health and Hospitals, the Department of Natural Resources, the Department of Wildlife and Fisheries, and the Department of Transportation and Development.

(3) "Commissioner" shall have the same meaning as provided in > R.S. 3:3202.

(4) "Person" shall have the same meaning as provided in > R.S. 3:3202.

(5) "Pesticide" shall have the same meaning as provided in > R.S. 3:3202.

(6) "Waters of the state" means both the surface and the underground waters within the state of Louisiana including all rivers, streams, lakes, ground waters, and all other water courses and waters within the confines of the state, and all bordering waters and the Gulf of Mexico.

' 3303. Administration

A. The provisions of this Part shall be administered by the Department of Agriculture and Forestry through the division of pesticide and environmental programs within the office of agricultural and environmental sciences.

B. The commissioner shall adopt such rules and regulations as are necessary to implement the provisions of this Part. The rules and regulations shall be adopted in accordance with the Administrative Procedure Act. > [FN1]

C. The commissioner shall employ such personnel as are necessary to administer the provisions of this Part.

' 3304. Cooperative agreements

In order to accomplish the objectives of this Part, the commissioner may enter into cooperative agreements with appropriate governmental agencies.

' 3305. Monitoring

The commissioner shall establish a program for monitoring the waters of the state for the purpose of determining the levels of pesticides in those waters. The provisions of this Part shall not prelude or prevent the monitoring of the waters of the state by any other agency.

' 3306. Determinations

A. When the commissioner determines that the concentrations of pesticides in any of the waters of the state exceed promulgated federal or state standards, or when the commissioner determines that the concentrations of pesticides in any of the waters of the state pose a threat or reasonable expectation of a threat to human health or to the environment, the commissioner shall determine the appropriate action to be taken under the provisions of this Part.

B. The commissioner shall adopt rules to establish procedures for making determinations under the provisions of Subsection A of this Section.

C. The determinations made under Subsection A of this Section shall be based on scientific and technical information, including but not limited to information from the following sources or concerning the following subjects:

- (1) The history of the levels of concentration of the pesticide or pesticides, based on scientifically valid monitoring studies.
- (2) The gravity of the threat to human health or to the environment.
- (3) Standards for contamination levels promulgated by appropriate governmental agencies.
- (4) Information published or made available by appropriate governmental agencies.
- (5) Information published or made available by pesticide manufacturers.
- (6) Information published or made available by institutions of higher education.
- (7) The availability of alternative pesticides.

- (8) The availability of alternative methods of application of the pesticide.
- (9) The economic impact of limiting, restricting, or prohibiting the use of the pesticide.
- (10) The purpose or purposes for which the affected waters are used.
- (11) Other criteria established by the commissioner by rule.

' 3307. Investigations

A. The commissioner may investigate any circumstances relating to the presence of pesticides in the waters of the state in concentrations which the commissioner has determined pose a threat or reasonable expectation of a threat to human health or to the environment under > R.S. 3:3306.

B. In connection with any investigation conducted under Subsection A of this Section, the commissioner may take the following actions:

(1) The commissioner may enter, during working hours, any property or premises within which the commissioner has reason to believe are located any affected waters or any substance which has caused or is causing any waters of the state to be affected.

(2) The commissioner may take samples of any affected water, or of any substance which has come in contact with the affected water, or of any substance which has caused or is causing any waters of the state to be affected.

C. In circumstances not covered by Subsection B of this Section, the commissioner may apply to the district court for the parish in which the affected water is located for a warrant, or warrants, authorizing an investigation and the taking of samples.

D. Entrance upon property or premises under the provisions of Subsection B of this Section shall not be deemed to be criminal trespass under any state law or local ordinance.

E. The commissioner may issue subpoenas to compel the attendance of witnesses or the production of documents or records anywhere in the state which are relevant to an investigation pursuant to this Part. The sheriff of the parish in which the witness or the documents or records are located shall serve the subpoena if requested by the commissioner.

' 3308. Orders and communications

When the commissioner makes a determination under the provisions of > R.S. 3:3306, the commissioner may take one or more of the following actions:

(1) The commissioner may issue appropriate protective orders to mitigate the further contribution to the accumulation of the pesticide or pesticides. The protective order may limit, restrict, or prohibit any application of a pesticide in the area where the application of the pesticide would contribute to the accumulation of the pesticide or pesticides.

(2) The commissioner may participate in issuing remedial orders directing any responsible person to take prompt remedial action to correct any situation in which any substance, action, or condition has caused or is causing any waters of the state to be affected. Each remedial order shall be issued in accordance with a cooperative agreement with the appropriate governmental agency entered into under the

provisions of this Part.

(3) The commissioner may communicate his determination to any appropriate governmental agency.

(4) The commissioner may participate in issuing a public communication concerning the determination. Each public communication shall be issued in accordance with a cooperative agreement with the appropriate governmental agency entered into under the provisions of this Part.

' 3309. Enforcement

A. The commissioner may seek and obtain injunctive relief to restrain and prevent violations of orders issued under the provisions of this Part or in accordance with the rules and regulations adopted under the provisions of this Part.

B. The commissioner may impose civil penalties for violations of the orders issued under the provisions of this Part or in accordance with the rules or regulations adopted under the provisions of this Part. The civil penalties shall not exceed twenty-five thousand dollars per offense. Each day on which a violation occurs shall be considered a separate offense. Civil penalties shall be imposed only on the basis of an adjudication of violation pursuant to an adjudicatory hearing held in accordance with the provisions of Section 3214 of this Chapter.

' 3310. Violations

No person shall violate any provision of this Part or of any rule or regulation adopted under the provisions of this Part.

' ' 3311 to 3317. [Blank]

' ' 3318 to 3340. [Blank]

' ' 3341 to 3350. [Blank]

PART VIII. SCHOOL PESTICIDE SAFETY

' 3381. Policy; purpose

The legislature finds that the exposure of school children to pesticides poses known and as of yet, unknown risks to their health and well-being. Providing controls on the application of these pesticides will help to ensure the safety and well-being of children in the state.

' 3382. Definitions

As used in this Part, the following terms shall have the following meanings ascribed to them:

(1) "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism in living humans or other living animals, which the commissioner declares to be a pest, other than mosquitos.

(2) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or combination of substances intended for use as a plant regulator, defoliant, desiccant, or any substance the commissioner of agriculture and forestry or his duly authorized representative acting at his direction determines to be a pesticide.

(3) "School" means any public or private day or residential school that provides elementary or secondary education.

(4) "Least toxic method" means an integral part of an integrated pest management plan and is a combination of common sense practices that use current, comprehensive information on the life cycles of pests and their interactions with the environment, in combination with available pest control methods used to manage pest damage by the most economical means with the least possible hazard to people, property, and the environment.

' 3383. Record of pesticides used to control pests

A. Each school shall keep a written record of restricted use pesticides used to control pests. After the application of a restricted use pesticide, an entry shall be made in the record which lists:

- (1) The name of the pesticide applied.
- (2) The quantity of pesticide applied.
- (3) The pest which the pesticide is intended to control.
- (4) The date, time, and location on the school grounds where the pesticide was applied.
- (5) The name of the person or persons who applied the pesticide.

B. The records required by Subsection A of this Section shall be kept in the business office of each school and made available for public inspection by any person during regular school hours.

' 3384. Requirement that eight hours precede the exposure of children to restricted use pesticides

A restricted use pesticide shall be applied to a school building or on school grounds only during periods in which students are not expected to be present for normal academic instruction or organized extracurricular activity for at least eight hours after the application.

' 3385. Least toxic method of pest control encouraged

Schools are encouraged to use the least toxic method of pest control. The least toxic method of pest control may include pest control methods other than the application of pesticides.

' 3386. Application of pesticides by certified commercial applicator

A. No person shall apply or supervise the application of any herbicide, rodenticide, insecticide, or restricted use pesticide, on a non-fee basis for grass and weed control, and rodent and general pest control in, on, or around structures or grounds of schools that provide education to kindergarten through twelfth grade classes, unless that person is a certified commercial applicator or is under the supervision of a certified commercial applicator as provided in >R.S. 3:3242 and the rules and regulations adopted thereunder. Such certified commercial applicator shall be trained in integrated pest management that includes but is not limited to pest prevention, least toxic methods of pest control, and applying pesticides judiciously. Training material shall include but not be limited to the guidelines in the EPA publication "Pest Control in the School Environment: Adopting Integrated Pest Management".

B. Pesticide applications for wood destroying insects shall be applied by a structural pest control operator licensed under the provisions of > R.S. 3:3368.

' 3387. Employment of certified commercial applicators by school systems

A. School systems having ten or more schools shall employ at least two certified commercial applicators.

B. School systems having less than ten schools shall employ at least one certified commercial applicator.

' 3388. Annual integrated pest management plan

A. The governing authority of each school, including but not limited to superintendents, headmasters, school boards, boards of directors, chief executive officers, or principals, shall prepare and submit, for each school under its authority, an annual integrated pest management plan that applies integrated pest management strategies of pest prevention methods and strongly recommends the least toxic methods of control for grass and weed control, and rodent and general pest control in, on, or around school structures and grounds.

B. The annual integrated pest management plan shall include but shall not be limited to the following:

- (1) The school name, mailing address, physical address, telephone number, and contact person.
- (2) If a company or specific applicator enters into a contract to apply any herbicide, rodenticide, insecticide, or restricted use pesticide, the name and number of the owner/operator license or place of business permit and the certification number of the commercial applicator or licensee.
- (3) The name and certification number of the certified commercial applicator for the school system.
- (4) The brand name and EPA registration number of all pesticides to be used.
- (5) The proposed location and dates for noncertified applicator training.

(6) A list of the following for each pesticide to be used:

- (a) The pest to be controlled.
- (b) The type of application to be used.
- (c) The location of the application.
- (d) Whether it is a restricted use pesticide or a general use pesticide.

C. The annual integrated pest management plan shall be submitted in writing to the director of pesticide and environmental programs for the Department of Agriculture and Forestry, on or before August first of each year and shall cover from August first of that year through July thirty-first of the following year.

D. The annual integrated pest management plan shall, upon request, be available for review by the commissioner and the general public in the business office of each school during regular school hours.

E. Any deviation from the submitted annual integrated pest management plan shall be delivered in writing to the director of pesticide and environmental programs no later than twenty-four hours prior to any pesticide application.

F. The annual integrated pest management plan shall not take the place of the record keeping requirements of > R.S. 3:3243(G) and 3383.

G. Records of inspections, identification, monitoring, evaluations, and pesticide applications shall be maintained by the schools and submitted with the annual integrated pest management plan to the department annually on a form prescribed by the department.

' 3389. Hypersensitive student registry; notification

Each school shall maintain a hypersensitive student registry listing the names of students whose parents have submitted a written statement to the school which shall include but not be limited to the student's name and address, parent's or guardian's signature, name, and address, and a written medical verification by a licensed physician which includes the physician's signature, name, and address.